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10 IN THE UNITED STATES BANKRUPTCY COURT
11 DISTRICT OF OREGON

12 In re:	}	Case No. 09-30938-elp11
13	}	
14 Society Of Jesus, Oregon Province, an	}	DEBTOR'S MOTION FOR
15 Oregon domestic nonprofit religious	}	APPOINTMENT OF FUTURE
16 corporation,	}	CLAIMANTS REPRESENTATIVE
Debtor.	}	

17
18 Society of Jesus, Oregon Province (the "Debtor") moves the Court for an order
19 appointing David A. Foraker ("Foraker") as the legal representative in this case (the
20 "Future Claimants Representative" or "FCR") for the following described persons
21 holding Claims¹ against the Debtor:
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23 ¹ Initially capitalized terms not defined herein have the meaning ascribed to such terms
24 in the United States Bankruptcy Code at 11 USC § 101 *et seq.*, or if not defined therein
25 in the Debtor's Motion for an Order (1) Setting a Claims Bar Date for Filing Proofs of
26 Claim, and (2) Approving Proof of Claim Forms, Bar Date Notices, Actual Notice
Procedure, and Media Notice Program (the "Claims Bar Date Motion") filed May 13,
2009.]

1 Persons holding Claims against the Debtor based on sexual, mental, or
2 physical abuse or misconduct, who meet one or more of the following
3 criteria, and who will neither timely file, nor be deemed to have timely filed
(e.g., due to excusable neglect), a proof of claim on or before the Claims
Bar Date²:

- 4 a. Persons who are under 18 years of age as of the 30th
5 day immediately preceding the Claims Bar Date; and,
6 b. Persons for whom the applicable state law statute of
7 limitations, as it existed on the Petition Date, has not
8 expired as of the 30th day immediately preceding the
Claims Bar Date, as determined under applicable
state or federal law, but without regard to federal
bankruptcy law.

9 For the purposes hereof, such persons are referred to herein as "Future Claimants" and
10 their claims as "Future Claims". Notwithstanding such definitions, the Future Claimants
11 should not include a person who knows he or she has a claim and chooses not to file it,
12 or inexcusably neglects to file it, by the Claims Bar Date, for reasons such as, but not
13 limited to, shame, protection of privacy, or fear of ramifications.

14 1. Since June 2000, the Debtor has been involved in litigation and claims
15 brought by more than 394 persons alleging sexual abuse, said to have occurred
16 primarily between 1950 and 1980, by clergy and others for which the Debtor was
17 claimed to have some responsibility. Since June 2000, total payments made directly by
18 the Debtor to claimants and their attorneys on account of these claims have totaled
19 approximately \$28.4 million, and payments by the Debtor's insurers have totaled more
20 than \$50 million. In late 2007, the Debtor settled 113 claims for damages arising from
21 sexual abuse alleged to have occurred in Alaska, with the Debtor paying \$5 million and
22 its insurers \$45 million to settle those claims.

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26 ² "Claims Bar Date" means the date anticipated to be established by the Court as the
deadline for filing proofs of claim against the Debtor in this case.

1 2. On February 17, 2009 (the "Petition Date"), there were approximately 153
2 tort claims pending against the Debtor which were in various stages of litigation and
3 discovery. The Debtor had been advised by a number of attorneys that they had
4 additional clients with claims that had not been asserted. The Debtor also believes
5 there may be other claims that are beyond the knowledge of anyone currently involved
6 in this Chapter 11 proceeding. Tyrrell Declaration, ¶ 2. For the purposes hereof, all
7 personal injury tort claims related to pre-petition acts of sexual, mental, or physical
8 abuse or misconduct are referred to as "Abuse Claims" and the persons asserting such
9 claims are referred to as the "Abuse Claimants".

10 3. On May 13, 2009, Debtor filed its Motion for an Order (1) Setting a Claims
11 Bar Date for Filing Proofs of Claim, and (2) Approving Proof of Claim Forms, Bar Date
12 Notices, Actual Notice Procedure, and Media Notice Program (the "Claims Bar Date
13 Motion").

14 4. One of the principal reasons for seeking relief under Chapter 11 was to
15 enable the Debtor to use the Chapter 11 process to address in a comprehensive
16 manner, and in one forum, all tort claims asserted against it, determine the extent of the
17 Debtor's liability with respect thereto, and address such claims, and all other claims
18 against the Debtor, in a fair and equitable manner. Tyrrell Declaration, ¶ 3. This cannot
19 be accomplished without addressing the issue of claims that may be asserted against
20 the Debtor in the future based on alleged acts of sexual, mental, or physical abuse
21 committed prior to confirmation of a plan in this case.

22 5. The courts have recognized the necessity for a future claimants
23 representative in cases involving clergy sex abuse claims. *See In re Roman Catholic*
24 *Archbishop of Portland in Oregon*, Case No. 04-37154-elp11(Bankr D Or 2004) [Docket
25 No. 723]; *The Roman Catholic Church of the Diocese of Tucson*, Case No. 4-04-bk-

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CLAIMANTS REPRESENTATIVE**

04721-JMM (Bankr D Az 2004); *In re Catholic Bishop of Spokane*, Case No. 04-08822-PCW-11 (Bankr ED Wash 2004) [Docket No. 499]; *In re Roman Catholic Diocese of Davenport*, Case No. 06-02229 (Bankr SD Ia 2006) [Docket No. 198]; *In re The Roman Catholic Bishop of San Diego*, Case No. 07-00939-LA11 (Bankr SD Ca 2007) [Docket No. 753]; and *In re Catholic Bishop of Northern Alaska*, Case No.08-00110-DMD (Bankr D Ak 2008) [Docket No. 341]. Consistent with all prior clergy sex abuse Chapter 11 cases, appointment of a future claimants representative in this case will serve to protect the interests of the Future Claimants, will assure that they are permitted to appear and be heard on any issue that may affect their interests, will facilitate the administration of this case, and will allow the parties to move forward with negotiations toward the formulation of a consensual plan of reorganization that includes provisions for the resolution and payment of the Future Claims.

6. The Future Claimants Representative's responsibilities and duties should include the following:

- Undertaking an investigation and analysis to assist the Court in determining the estimated number of Claims and Claim amounts held by the Future Claimants;
- Filing Proofs of Claim on behalf of all Future Claimants by the Claims Bar Date, or any Court ordered extension thereof³;
- Negotiating on behalf of the Future Claimants their treatment in any proposed plan of reorganization and voting on behalf of the Future Claimants to accept or reject the plan;

³ Such a filing by the FCR, should not, however, relieve any person (except a minor) who knows they have a claim from the obligation to file his or her own proof of claim by the Claims Bar Date, whether or not the applicable state law statute of limitations regarding such claim has expired.

- 1 • Advocating the legal position of the Future Claimants in any proceeding
- 2 before this Court or in any appellate court;
- 3 • Filing pleadings and presenting evidence, as necessary, on any issue
- 4 affecting the Future Claimants;
- 5 • Taking all other actions as are reasonably necessary and appropriate to
- 6 represent the interests of the Future Claimants.

7 7. The Debtor believes that David A. Foraker is well suited to perform the
8 duties of the Future Claimants Representative because of his extensive experience and
9 knowledge in Chapter 11 bankruptcy proceedings and because he has previously
10 served as a future claimants representative in the only other clergy sex-abuse related
11 Chapter 11 case filed in this district. *In re Roman Catholic Archbishop of Portland in*
12 *Oregon*, Case No. 04-37154-elp11(Bankr D Or 2004).

13 8. The Debtor believes that Mr. Foraker's prior experience as a future
14 claimants representative and his extensive knowledge of the Bankruptcy Code and
15 Chapter 11 in particular will be invaluable in representing the Future Claimants in this
16 case. In concluding that Mr. Foraker should be appointed the Future Claimants
17 Representative, the Debtor considered the possible appointment of another person
18 proposed by the Unsecured Creditors Committee (the "Committee"), however, the
19 Debtor came to the conclusion that the appointment of that person would not add any
20 perceived benefit and would likely only increase the cost to the estate. The person
21 proposed by the Committee, although being a highly qualified bankruptcy trustee and
22 restructuring professional, is located in Boston, does not have previous experience in
23 cases involving future claims, is not a bankruptcy attorney and would need to retain
24 counsel (including local counsel if an out-of-state attorney is retained), and whose
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1 regular hourly rate (\$625 per hour) exceeds that of Mr. Foraker by approximately \$200
2 per hour.

3 9. Mr. Foraker has indicated his willingness to serve as the Future Claimants
4 Representative, and to receive compensation for services rendered at his customary
5 hourly rates (currently \$415 per hour subject to periodic adjustment) on the same basis
6 as a trustee, examiner, or other professional person, subject to application and approval
7 of the Court pursuant to 11 USC §§ 327–331 and Bankruptcy Rules 2014–2017.

8 WHEREFORE, the Debtor requests that the Court appoint David A. Foraker as
9 the Future Claimants Representative in this case.

10 Dated this 13th day of May, 2009.

11 SUSSMAN SHANK LLP

12 */s/ Thomas W. Stilley*

13 _____
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15 Howard M. Levine, OSB No. 80073
Susan S. Ford, OSB No. 84220
Attorneys for Debtor and Debtor-In-Possession

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1 CERTIFICATE OF SERVICE

2 I, Janine E. Hume declare as follows:

3 I am employed in the County of Multnomah, State of Oregon; I am over the age
4 of eighteen years and am not a party to this action; my business address is 1000 SW
5 Broadway, Suite 1400, Portland, Oregon 97205-3089, in said County and State.

6 I certify that on May 13, 2009, I served, via first class mail, a full and correct copy
7 of the foregoing **DEBTOR'S MOTION FOR APPOINTMENT OF FUTURE CLAIMANTS**
8 **REPRESENTATIVE**, on the parties of record, addressed as follows:

9 **See attached service list.**

10 I also certify that on May 13, 2009, I served the above-referenced document(s)
11 on all ECF participants as indicated on the Court's Cm/ECF system.

12 I swear under penalty of perjury that the foregoing is true and correct to the best
13 of my knowledge, information, and belief.

14 Dated: May 13, 2009

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16 */s/ Janine E. Hume*

17 _____
18 Janine E. Hume, Legal Assistant

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21 F:\CLIENTS\19620\004\CERTIFICATE OF SERVICE AND RELATED INFORMATION\CERTMASTER (JANINE).DOC
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